IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 12TH DAYOF MAY, 2022.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO -ADEBIYI

SUIT NO. CV/103/2022

MOTION NO:M/4310/2022

AKINLOLU TIMOTHY KEHINDE, SAN ---------- CLAIMANT

AND

GUARANTY TRUST BANK PLC ---------- DEFENDANT

RULING

The Defendant filed a notice preliminary objection seeking the following reliefs: -

1. The Court lacks jurisdiction to entertain this suit as the Claimant/Respondent failed to comply with the provisions of Section 13 of the Credit Reporting Act, 2017.
2. That this present suit constitutes an abuse of court process and as such forestalled the compliance with the provisions of the Credit Reporting Act, 2017.
3. AND for such further orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is brought are as follows:

a. The Claimant filed this action without a cause of action arising.
b. The Claimant/Respondent instituted this suit while Suit No: CV/2470/2021 between Akinlolu Timothy Kehinde SAN V. Guaranty Trust Bank plc was still subsisting, therebyforestalling parties from complying with Section 13 of the Credit Reporting Act, 2017.

c. The Claimant/Respondent, due to his gross violation of the Credit Reporting Act, 2017 have failed to invoke the jurisdiction of this Honourable Court.
d. This Honourable Court lacks jurisdiction to entertain this suit.

The application is supported by a6-paragraph affidavit deposed to by one Habila Danladi,a litigation secretaryin the law firm of Oli and Partners, the law firm representing the Defendant/Applicant. The content of the supporting affidavit is essentially that the Claimant had earlier filed Suit No: CV/2479/2021 between Akinlolu Timothy Kehinde, SAN V. Guaranty Trust Bank PLC, on 28th September, 2021, seeking what he believes to be similar reliefs with this present suit before this Honourable Court.That the Claimant discontinued the said Suit No: CV/2479/2021, with the leave of this Honourable Court on 25th January, 2022 and the said suit was struck out. That this present suit was filed before Suit No: CV/2479/2021was discontinued by the Claimant. That he believes that the Claimant/Respondent have failed to comply with the condition precedents before instituting this action against the Defendant/Applicant on issues involving credit reports.That it will be in the interest of justice to dismiss this suit and that the Claimant/Respondent will not be prejudiced by the grant of this application.

Attached is a written address whereinthe learned Counsel for the Defendant/Applicant raised three (3) issues for determination to wit:

1. Whether the Claimant/Respondent properly discontinued Suit No: CV/2479/2021 before instituting this present suit.
2. Whether the Claimant/Respondent could have complied with the condition precedent set out in section 13 of the Credit Reporting Act, 2017 during the pendency of Suit No: CV/2479/2021 and this present suit which ran concurrently and constituted an abuse of court process?
3. Whether this Honourable Court lacks jurisdiction to entertain this suit?

Summarily, on the first issue, learned counsel submitted that for a Claimant to discontinue a suit against the Defendant same must be done without taking any further step in the action. Counsel contended that the Claimant/Respondent after the receipt of the Defendant/Respondent's Statement of Defence in Suit No: CV/2479/2021 and after a date had been slated for the hearing of the substantive matter had taken a further step by filing a Counter Affidavit to their preliminary objection before filing a Notice of Discontinuance. He urged this Court to hold that the Claimant/Respondent having taken all those steps stipulated above, leave of Court was required to discontinue Suit No: CV/2479/2021, which said leave was granted on the25th day of January, 2022 after this present suit was instituted and the suit struck out.

On the second and third issue, learned counsel submitted thatit is the law that noncompliance with a condition precedent before instituting an action renders such action incompetent.Counsel submitted thatit is trite and settled law that where a statute (in this case the Credit Reporting Act, 2017) or Rules are put in place for compliance for institution of an action or suit or proceedings, the method or procedure prescribed by the statute or the Rules of the Court must be adhered to by a Claimant otherwise the action will be incompetent thereby robbing the Court of its jurisdiction. Counsel then submitted that the Claimant/Respondent herein having failed to properly discontinue Suit No: CV/2479/2021 before filing this extant suit on 17th January,2022, thereby both suits were running concurrently until 25th January, 2022, when leave was obtained and Suit No: CV/2479/2021 struck out.The Claimant could not have complied with the condition precedents laid down in Section 13 of the Credit Reporting Act, 2017 because at all material times there was a pending suit before this Honourable Court which did not enable parties to comply with the provisions of the Credit Reporting Act, 2017.Counsel submitted that the non-compliance with the conditionprecedentas required by Section 13 (1)-(4) of the Credit Reporting Act, 2017, robs this Honourable Court of its jurisdiction and urged this Honourable Court to

grant this application.Counsel relied on the following authorities amongst others: -

1. **Order 24 Rule 1 (1) & (3) of the Federal Capital Territory High Court (Civil Procedure) Rules, 2018.**
2. **ONWUKA V. ONONUJU & ORS (2009) LPELR –2721 (SC)**
3. **AGIP NIGERIA LTD V. AGIP PETROLI INTERNATIONAL & ORS (2010) 5 NWLR (Pt. 1187) 348 at 419 H-420 per Adekeye J.S.C.**
4. **SHELIM &ANOR V. GOBANG (2009) LPELR-3043 (SC)**
5. **SOCIETY BIC S.A. & ORS V. CHARZIN INDUSTRIES LTD (2014) LPELR-22256 (SC).**
6. **MADUKOLU V NKEMDILIM (1962) ALL NLR 587.**

Counsel to the Claimant/Respondent in opposing the application replied orally and submitted that the application is a clear misconception of the law in Order 24 Rules 1 of this Court. That the fact that the Claimant sought the leave of Court to discontinue the action was being courteous because defendant did not file a defence to that action as at the date the case was effectively discontinued. That if they filed a defence it was out of time. That as at the time the current action was initiated the initial action had been effectively discontinued. He cited **NV SCHEEP V. MV "S" ARAZ (2000) 15 NWLR (PT. 691) 622 @ 664-665 PARAS. F-H, A-D and ANI V. OTU(2017) 12 NWLR (PT. 1578) 30 @ 59 PARAS. D-F**. On the second leg of the objection of non-compliance with Credit Reporting Act, 2017 counsel submitted that they had complied with the provisions referring the court to paragraphs 12, 15, 18, 20 and 21 of the Claimant's statement of claim.

I have gone through the application and considered the submissions of both counsel, the two (2) issues for determination here are: -

1. **At what point was Suit No. CV/2479/2021 previously filed deemed discontinued.**

2. **Whether the Claimant has fulfilled the conditions precedent for instituting this suit as provided under Section 13 (1-4) of the Credit Reporting Act, 2017.**

On the first issue, "**At what point was Suit No. CV/2479/2021 previously filed deemed discontinued".**I have carefully considered the submission of parties on this issue. **Order 24 Rules 1 & 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2018** provides for withdrawal or discontinuance of civil suits before the Court. For ease of reference, I reproduce the said Order hereunder:

> 1.(1) The Claimant may at any time before receipt of the defence or after the receipt, before taking any other proceeding in the action, by notice in writing duly filed and served, wholly discontinue his claim against all or any of the Defendants or withdraw any part or parts of his claim. He shall pay the Defendant's cost of action, or if the action be not wholly discontinued, the costs occasioned by the matter withdrawn.
>
> (2) A discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent claim.
>
> (3) Where a defence had been filed, the Claimant may with the leave of the Court discontinue the proceedings or any part on such terms andconditions as the Court may order.
>
> (4) Where proceedings have been stayed or struck out upon a Claimant's withdrawal or discontinuance under this Order, no subsequent claim shall be filed by him on the same or substantially the same facts until the terms imposed on him by the Court have been fully complied with.
>
> (5) The Court may in the same manner and discretion as to terms, upon the application of a Defendant order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out.
>
> 2. When a cause is ready for trial, it may be withdrawn by either Claimant or the Defendant upon producing to the Registrar a consent in writing signed by the parties and thereupon the Court

shall strike out the matter without the attendance of the parties or their legal practitioners.

The above provision is clear and unambiguous. The principle is settled that in the construction of a statute where the language used is plain and unambiguous, effect must be given to its plain and ordinary meaning without resort to any intrinsic or external aid unless this would lead to manifest absurdity or injustice. See **Okotie- Eboh V Manager& Ors (2004) LPELR-2502 (SC)**. It follows therefore that a plaintiff **MAY** without leave of court discontinue a suit against all or any of the defendants or withdraw any part of his claim before receipt of defence or after the receipt, before taking any further step in the proceeding. In such a situation, the notice of discontinuance automatically terminates the proceedings and a formal order striking out the suit may be made by court. But where defence has been filed, the Claimant may with leave of the court discontinue the proceedings and subject to conditions that may be imposed by the court.

Now, the present case is different and unique in its own way. First and foremost,the Defendant filed this preliminary objection on the 6th of April, 2022 on the following facts:

a. That the Claimant/Respondent herein filed Suit No: CV/2479/2021 between Akinlolu Timothy Kehinde, SAN V. Guaranty Trust Bank PLC, on 28th September, 2021, seeking what he believes to be similar reliefs with this present suit before this court.
b. That the Claimant/Applicant was served with the Defendant/Applicant's Statement of Defence in that suit accompanied with a Notice of Preliminary Objection.
c. That the Claimant herein took further steps by filing a Counter-Affidavit in response to the Defendant/Applicant's Notice of Preliminary Objection.
d. That the suit came up on the 25th of November, 2021 and was further adjourned to 25th January, 2022, for hearing.

e. That The Claimant/Respondent discontinued the said Suit No: CV/2479/2021, with the leave of this Honourable Court on 25th January, 2022 and the said suit was struck out.
f. That he noticed that this present suit was filed on the 17th day of January, 2022 before Suit No: CV/2479/2021 was struck out on the 25th day of January, 2022. He thus noticed and believes that both suits concurrently existed and were pending before this Honourable Court from the 17th day of January, 2022, being the date of filing of this present suit, till the 25th day of January, 2022, being the date the Claimant/Applicant sought leave to discontinue Suit No: CV/2479/2021.
g. That on the 26th of November, 2021, the Claimant served the Defendant with a letter of immediate commencement of legal action against the Defendant during the pendency of Suit No: cv/2479/2021.
h. That the Defendant was perplexed by the letter as Suit No: CV/2479/2021 was yet to be discontinued or struck out.
i. That he believes that the pendency of Suit No: CV/2479/2021, tied the arms of parties to comply with the relevant provisions of the law.
j. That he believes that the Claimant/Respondent have failed to comply with the condition precedents before instituting this action against the Defendant/Applicant on issues involving credit reports.

In **Babatunde v. Pan Atlantic Shipping and Transport Agencies Ltd and 2 Ors(2007) LPELR-698 (SC)**the Supreme Court per Ogbuagu JSC stated as follows at pages 163-164:-

> *"Secondly when an application for discontinuance of an action is made, one of the things to be considered by a trial Court is at what stage the said application is made…Further on page 164 Ogbuagu JSC stated further:- "From some of the Rules of some State High Courts, I note that from the first date that a case is fixed for hearing and beyond, leave to discontinue the suit is no longer*

automatic. This is because it seems to me at that stage the plaintiff is no longer "dimius litis".

Also in **Nwokedi vs. R.T.A Ltd (2002) 6 NWLR Part 762 Page 191** the Court of Appeal perFabiyi JCA (as he then was) at pages 196-197:-

"From the first date that a case is slated for hearing and beyond, leave to discontinue same is no longer automatic. This position is no longer a moot point. A trial Judge has discretion whether to allow same on terms or disallow discontinuance and order the Plaintiff to proceed with his case....".

Relying on the above authorities, it is clear that the stage of the suit determines when the suit can be said to have been discontinued. The Defendant hasaverred that hearing date had been slated before notice of discontinuance was filed hence suit No. CV/2479/2021 was deemed discontinued on the 25th of January, 2022.

The question that comes to fore here begging for answers are;

a. At what point can a defendant raise the issue of multiplicity of action?
b. At the time of filing this preliminary objection in this instant suit was their multiplicity of action?

In answering the 1st question which is **"At what point can a defendant raise the issue of multiplicity of action?".**The Supreme Court in**CHIEF VICTOR UMEH & ANOR VS. PROFESSOR MAURICE IWU & ORS (2008) LPELR - 3363 (SC)**on what constitutes abuse of Court process held:

"Generally, abuse of process contemplates multiplicity of suits between the same parties in regard to the same subject matter and on the same issues. To institute an action during the pendency of another suit claiming the same relief is an abuse of Court process, and the only course open to the Court is to put an end to the suit. It does not matter whether the suit is on appeal, the subsequent action would constitute an abuse of process. The attitude of the Courts is to strike out the suit filed in abuse of process. Abuse of

> Court process therefore simply, in practical sense, denotes a situation where a party has instituted a multiplicity of suits against the same opponent in respect of the same subject matter and on the same issues. This manner of using Court process which is obviously lacking in bona fide leads to the irritation and annoyance of the other party and thus impedes due administration of justice.

The court in **Chief Victor Umeh& Anor v. professor Maurice Iwu&Ors (Supra)** further held that;

> "Therefore, to sustain a charge of abuse of process, **there must co-exist inter alias** (a) a multiplicity of suits; (b) between the same opponents; (c) on the same subject matter; and (d) on the same issues. All these pre-conditions are mutually inclusive as they are conjunctive".

Flowing from the above,a defendant can raise the issue of multiplicity of action once there "co-exist inter alia" other suit(s)in same Court or even before another Court or Courts in respect of the same subject matter and on the same issuesbeing pursued simultaneously by the Plaintiff/Applicant as the case may be on the grounds of abuse of court process. See the case of **Expo, Ltd. v. Pafab Enterprises Ltd. (1992) 2 NWLR (Pt. 591) 449 at 462**.

Thenthe next question to answer is **"At the time of filing this preliminary objection in this instant suit was there multiplicity of action?'**in other words, was there co-existence of similar suits being pursued simultaneously?The principle of he who assert must prove comes to play. The Defendant has to prove that there is a subsisting suit on the same subject matter pending in another Courtat the time of filing this preliminary objection for this court to hold that it is an abuse of court process.I have gone through the Defendants averments in its affidavit in support of the preliminary objection, in para 3 (e) the deponent avers that;

(e) That The Claimant/Respondent discontinued the said Suit No: CV/2479/2021, with the leave of this Honourable Court on 25th January, 2022 and the said suit was struck out.

Therefore, it is not in dispute that Suit No. CV/2479/2021had been discontinued on the 25th of January, 2022and no longer in existence before this preliminary objection was filedon the 6th of April, 2022. It is worthy to reiterate that Defendant did not file this application at the time both suits were existing simultaneously but rather chose to file same after one of the suits had been struck out. It only becomes an abuse of Court process when there is existing multiplicity of suits pending before the court between the same opponents, on the same subject matter and on the same issues. Therefore, based upon the principle of law laid above, I hold that there is no abuse of court process presently since Suit No. CV/2479/2021 has been discontinued to the knowledge of both parties as at the time of filing this preliminary objection, hence there is only one suit in existence on the same issue, same subject matter and same parties.

On the second issue, "**Whether the Claimant has fulfilled the conditions precedent for instituting this suit as provided under Section 13 (1-4) of the Credit Reporting Act, 2017".** The Defendant averred in its affidavit in support of the instant application that he believes that the Claimant have failed to comply with the condition precedents before instituting this action against the Defendant on issues involving credit reports as provided for in Section 13 of the Credit Reporting Act, 2017.However, in hisoral reply, the Claimant's counsel submitted that they had complied with the provisions of Section 13 of the Credit Reporting Act, 2017 andreferred the court to paragraphs 12, 15, 18, 20 and 21 of the Claimant's statement of claim.

It is the law that where statutory condition precedents are prescribed before a relief or remedy is claimed in Court, the claimant must comply with and exhaust the prescribed condition before the institution of a

Court action as held in **ATTORNEY GENERAL OF KWARA STATE & ANOR v. ALHAJI SAKA ADEYEMO & ORS (2016) LPELR-41147(SC).** It is only after compliance with the said condition precedents that the trial Court would have jurisdiction to hear and determine the claims of the Claimant.

In this instance, **Section 13 (1-4) of the Credit Reporting Act, 2017**provides as follows: -

> *13. (1) Where a data subject has any complaint regarding the accuracy, validity, completeness or otherwise of any credit information or the contents of a credit report, the Data Subject shall submit a complaint in writing (whether by electronic mail or other written means) to the Credit Information Provider or Credit Bureau.*
>
> *(2) A credit information provider or credit bureau shall upon receipt of a complaint investigate, determine and communicate the outcome of the determination of such complaint to the Data subject within 10 working days following the receipt of the Complaint.*
>
> *(3) if the complaint is not resolved within (10) working days of receiving same, the Credit Provider shall immediately (but not more than 3 working days) refer . the complaint to the Bank and the Bank shall resolve the complaint within 10 working days of the receipt of the complaint.*
>
> *(4) if the Bank does not resolve the complaint within ten (10) working days or a party to the complaint is otherwise dissatisfied with the decision of the Bank, the dissatisfied party shall have a right to proceed to a court of competent jurisdiction for resolution of the dispute.*

By use of the word "shall" in the above section, it becomes mandatory and compulsory for a Claimant to comply with the provision of **Section 13 of theCredit Reporting Act, 2017**before instituting an actionagainst

the Defendant.Now failure to comply with condition precedent, where it is statutorily and mandatorily required, renders an action commenced in breach of such requirement incompetent and the Court would lack the jurisdiction to entertain such suit until such a time as the Court is satisfied that such condition precedentp has been complied with. The Claimant's counsel hassubmitted that they had complied with the provisions of the said Section andreferred the court to paragraphs 12, 15, 18, 20 and 21 of the Claimant's statement of claim.

I have gone through theprovisions of **Section 13 (1-4) of theCredit Reporting Act, 2017**and**Section 27 of the Act** which is the interpretation section defines **Credit Bureau and Credit Information Providers** as follows: -

- ***Credit Bureau****means an entity duly licensed under this Act.*
- ***Credit Information Providers*** *means entities that provide or furnish Credit Information to a Credit Bureau and includes;*
  a. *Banks, specializes banks and other financial institutions (as such terms are used or defined under the Banks and Other Financial Institutions Act Cap. B3 Laws of the Federation of Nigeria 2004 of by the Bank);*
  b. *-------*

Having ascertained the meaning of **Credit Bureau and Credit Information Providers**mentioned in the Credit Reporting Act,from the Claimant's statement of claim especially paragraphs 15, 18, 19 and 20, let me reproduce: -

> 15. The Claimant avers that he caused a letter of protest to be written to the Defendant. The letter dated 23 September, 2021 shall be relied upon and notice is hereby given to the Defendant to produce the original letter at the trial.
>
> 18. The defendant replied the Claimant's letter of 23 September, 2021 on the 30/9/2021 with two letters wherein it promised to investigate the Claimant's allegation and also justified its action

of sending negative credit report to the Credit Registry, denying liability for any wrongdoing. The Defendant's two letters received on the 30/9/2021 are hereby pleaded.

19. The Claimant avers that in reply to the Defendant's letter wrote the letter dated the 25th day of November, 2021 informing the Defendantthat he was not satisfied with their explanation and therefore advised it to refer the matter to the Central Bank of Nigeria (CBN) for resolution in accordance with the extant law.

20. The Claimant avers that the Defendant has failed to refer the dispute to the Central Bank of Nigeria, the Regulator after he notified the Defendant that he was not satisfied by their response and further requested them to refer same to Central Bank of Nigeria for resolution.

It is clear from the Claimant pleading (Statement of Claim) reproduced above thatthe condition precedentsas provided in **Section 13 (1-4) of theCredit Reporting Act, 2017**were complied with as the Claimant wrote a complaint letter to the Bank who is the Credit Information Providers as required by the Act and complied with all condition precedent. On this basis, I hold that this Honourable Court has the jurisdiction to entertain this suit.

In conclusion, I rule that, this Preliminary Objection filed by the Defendant/Applicant has no basis, it is a simple academic exercise and waste of court's time. It is hereby struck out.

Parties: Claimant is present.
Appearances: Faith Saiki appearing with I. C. Nnamdi-Okonkwo and N. C. Mutfwang for the Claimant. Babatunde Tijani appearing for the Defendant.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
12TH MAY, 2022